

It is submitted that the Examiner has not established a proper basis for Restriction between elected apparatus claim 34 and the non-elected method claims, particularly method claim 23. The Examiner asserts that the method of claim 23 can be performed by a materially different apparatus than the apparatus of claim 34, and that the apparatus of claim 34 can be used in a materially different method than claim 23. The applicant disagrees and hereby petitions this Restriction Requirement.

It will be noted that method claim 23 includes a series of steps and apparatus claim 34 calls for a series of means, specifically a means for performing each of the steps of claim 23.

Claim 23 (withdrawn)	Claim 34 (previously presented)
A method for communicating information about a patient during ambulatory monitoring of a physiological condition of the patient comprising the steps of:	An apparatus for communicating information about a patient during ambulatory monitoring of a physiological condition of the patient comprising:
attaching a physiological monitoring system to a patient;	a physiological monitoring system for attachment to a patient;
detecting a selected physiological parameter of the patient;	means for detecting a selected physiological parameter of the patient with the physiological monitoring system;
sensing physical activity of the patient;	means for sensing physical activity of the patient;
comparing the detected physiological parameter with a first pre-determined criteria to determine a physiological state of the patient reflecting an alarm condition;	means for comparing the detected physiological parameter with a first pre-determined criteria to determine a physiological state of the patient reflecting an alarm condition;
generating an alert signal if the physiological condition of the patient reflects an alarm condition;	means for generating an alert signal if the physiological condition of the patient reflects an alarm condition;
transmitting the alert signal to the patient, if the sensed physical activity of the patient indicates the patient is active and inhibiting the transmission of the alert signal if the sensed physical activity of the patient indicates that the patient is at rest.	means for transmitting the alert signal to the patient if the sensed physical activity of the patient indicates the patient is active and inhibiting the transmission of the alert signal if the sensed physical activity of the patient indicates that the patient is at rest.

As can be seen from the foregoing table, each step of claim 23 has a corresponding means for performing it in claim 34, and vice versa. Accordingly, it is submitted that the apparatus of claim 34 only has means for performing the method of claim 23, and that claim 23 can only be practiced with an apparatus having the means of claim 34.

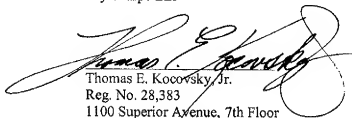
The Examiner asserts that "the apparatus as claimed can be used by a materially different process, such as a method of stimulating the heart in order to treat tachyarrhythmia versus a method for communicating information about the patient, which is instantly claimed, including the apparatus of claim 34, as argued." Claim 34 has no means for stimulating the heart. Rather, it has a means for transmitting the alert signal to the patient, i.e., a means for performing the step of transmitting the alert signal to the patient set forth in claim 23. Thus, both the method and the apparatus are for communicating information about the patient and neither includes steps or means for stimulating the heart in order to treat tachyarrhythmia.

Further, the Restriction Requirement was made after a first Office Action on the merits of the claims of all four Groups. Further, the Examiner rejected the independent claims (and most of the dependent claims) of every Group on the same ground of rejection, i.e., as being anticipated by Nolan. (The few dependent method and apparatus claims that were not were all rejected as being obvious over Nolan in view of Toda). Because the method and apparatus claims were both rejected based on the same grounds of rejection over the same reference, it is submitted that they are not directed to a different invention. Moreover, because the Examiner had already performed and issued an Office Action on both the method and apparatus claims, it is submitted that there is no additional burden on the Office to consider both the method and the apparatus claims in this application.

Accordingly, it is submitted that the Restriction Requirement is improper and should be withdrawn. An early withdrawal of the Restriction Requirement is respectfully requested.

Respectfully submitted,

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